

**LEMON GROVE CITY COUNCIL
AGENDA ITEM SUMMARY**

Item No. 2
Mtg. Date October 21, 2014
Dept. City Attorney's Office

Item Title: **Ordinance No. 424 – Massage Therapy Practice: Local Licensing**

Staff Contact: James P. Lough, City Attorney

Recommendation:

Staff recommends that the City Council introduce Ordinance No. 424 and waive further reading.

Item Summary:

The Massage Therapy Reform Act, which will become effective on January 1, 2015, establishes new regulations for massage therapy establishments in the State of California. Lemon Grove's regulations for massage establishments are currently regulated through Municipal Code Chapter 8.20—this code was adopted by the City Council upon the City's incorporation. The adoption of the Massage Therapy Reform Act requires the City to modify its regulations on massage establishments. Staff has prepared Ordinance No. 424 for City Council consideration.

The staff report (**Attachment A**) provides background information about State and local massage regulations, an analysis of the Massage Therapy Reform Act, and a summary of Ordinance No. 424.

Fiscal Impact:

None.

Environmental Review:

- | | |
|--|--|
| <input checked="" type="checkbox"/> Not subject to review
<input type="checkbox"/> Categorical Exemption, Section | <input type="checkbox"/> Negative Declaration
<input type="checkbox"/> Mitigated Negative Declaration |
|--|--|

Public Information:

- | | | |
|--|---|---|
| <input checked="" type="checkbox"/> None | <input type="checkbox"/> Newsletter article | <input type="checkbox"/> Notice to property owners within 300 ft. |
| <input type="checkbox"/> Notice published in local newspaper | | <input type="checkbox"/> Neighborhood meeting |

Attachments:

- A. Staff Report
- B. Ordinance No. 424

LEMON GROVE CITY COUNCIL STAFF REPORT

Item No. 2

Mtg. Date October 21, 2014

Item Title: **Ordinance No. 424 – Massage Therapy Practice: Local Licensing**

Staff Contact: James P. Lough, City Attorney

Discussion:

The Massage Therapy Reform Act, recently adopted by the State legislature and signed into law on September 19, 2014, establishes new regulations for massage therapy establishments. The Massage Therapy Reform Act replaces the original State massage law that established an industry nonprofit organization (the California Massage Therapy Council) to regulate massage therapists and establishments. Cities were also required to regulate establishments and therapists through local ordinance. Lemon Grove's regulations on massage establishments are currently regulated through Municipal Code Chapter 8.20—this code was adopted by the City Council upon the City's incorporation.

The adoption of the Massage Therapy Reform Act, which becomes effective on January 1, 2015, requires the City to modify its regulations on massage establishments. Staff has prepared Ordinance No. 424, which establishes revised regulations that comply with State law. The staff report provides background information about State and local massage regulations, an analysis of the Massage Therapy Reform Act, and a summary of Ordinance No. 424.

Background

Prior to 2009, massage businesses and massage professionals were not regulated by the State. Instead, local jurisdictions, including Lemon Grove, regulated the massage industry through hours of operation, sanitary conditions, education and other areas of interest and concern to ensure the business was legitimate. These regulations varied from jurisdiction to jurisdiction. With the rise in prominence of several franchise massage businesses, the massage industry began to lobby for the creation of a certification process that stressed the professionalism of massage professionals.

In 2008, the massage industry helped craft SB 731, which established a voluntary certification process through the California Massage Therapy Council (CAMTC) for massage professionals (the CAMTC is an industry-run nonprofit organization). The idea behind the bill was to professionalize the industry by creating uniform standards for massage practitioners and therapists, with the idea that the massage industry should be treated "no better and no worse" than any other professional service provider. The bill authorized CAMTC to certify massage professionals, conduct background checks, and investigate schools offering massage degrees. SB 731 provided for a voluntary certification process for massage professionals by CAMTC.

Under SB 731, cities were able to regulate massage establishments. However, the State law required local governments to charge the lowest business license fee of any professional service to massage establishments. It also curtailed some local government enforcement powers to protect local communities.

Ultimately, the goals of SB 731 were not realized. It became clear in some communities, that the local government restrictions of SB 731 made it difficult to regulate illicit businesses operating as massage establishments. Because of this, the League of California Cities worked with State legislators to create reform legislation.

Attachment A

Massage Therapy Reform Act

The Massage Therapy Reform Act overhauls California's existing massage therapy law and addresses the problems with businesses that engage in illegal activities. One of the main features of the law is that the State takes on the role as the licensing authority, while allowing local governments to regulate and enforce local standards. The City will no longer be required to perform background checks for massage therapists. Some of the other features of the new law include:

- Re-establishes the California Massage Therapy Council as a State-operated body with the following make up of members:
 - Local Government Agencies – representatives from the California League of Cities, California Police Chiefs Association, California State Association of Counties, a local government health official, and an attorney representing a city,
 - State & Education Agencies – representative from the Department of Consumer Affairs, Office of the Chancellor of the Community Colleges, and California Association of Private Postsecondary Schools,
 - Special Interest – representative from an anti-human trafficking organization, and
 - Massage Industry – representative from the American Massage Therapy Association, a certified massage therapist or practitioner, and someone that represents a massage business entity.
- Authorizes the State to issue permits after perform background checks for employees of massage establishments,
- Requires all massage therapists and practitioners to possess a massage certificate,
- Raises the professional standards to qualify for massage certification, including educational requirements,
- Expands the definition of unprofessional conduct to include sexual activities, inappropriate attire, and fraud,
- Increases the State's ability to discipline violators of the law.

Ordinance No. 424

To be in line with the Massage Therapy Reform Act, staff recommends that the City Council consider an ordinance that repeals Municipal Code Chapter 8.20 (Massage Establishments) and replaces it with a new Chapter 8.20 (Massage Therapy Practice: Local Licensing).

The proposed ordinance establishes that it is unlawful to operate as a massage therapist or practitioner without possessing a certificate through the California Massage Therapy Act and without a business license. The ordinance indicates that those that operate a massage establishment without a State license are found in violation of the Municipal Code and would be guilty of a misdemeanor and/or infraction and subject to lose their business license.

The Massage Therapy Reform Act prohibits local governments from defining massage establishments as adult entertainment or imposing more restrictive requirements than State law regarding the operation of a business. As such, the proposed ordinance does not include operational regulations.

Attachment A

Conclusion:

Staff recommends that the City Council introduce Ordinance No. 424 and waive further reading. If Ordinance No. 424 is adopted by the City Council on November 4, 2014, the City will provide educational material to the massage establishments in Lemon Grove.

Attachment B

ORDINANCE NO. 424

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LEMON GROVE, CALIFORNIA AMENDING CHAPTER 8.20 (MASSAGE ESTABLISHMENTS) OF THE LEMON GROVE MUNICIPAL CODE AND RENAMING CHAPTER 8.20 (MASSAGE THERAPY PRACTICE: LOCAL LICENSING)

WHEREAS, the State Legislature has amended statutes related to Massage Therapist practice in California; and

WHEREAS, the City of Lemon Grove has regulatory requirements that conflict with newly adopted State Law; and

WHEREAS, State legislation requires Cities to regulate the practice of massage therapy in accordance with state law as of January 1, 2015; and

WHEREAS, the City Council has determined that the regulation of massage therapists shall be limited to the authority granted to general law cities established by state law; and

WHEREAS, the City of Lemon Grove intends to adopt Massage Therapy regulations in a manner consistent with the delegation of authority from the state for business license; health and safety; and land use and other regulatory purposes allowed by state law; and

WHEREAS, the adoption of this new set of regulations places on the State of California the primary burden of determining that massage therapy is practiced in accordance with professional standards by qualified therapists.

NOW THEREFORE, the City Council of the City of Lemon Grove does ordain as follows;

1. Chapter 8.20 (Massage Establishments) is hereby renamed to Chapter 8.20 (Massage Therapy Practice: Local Licensing).

2. Chapter 8.20 (Massage Therapy Practice: Local Licensing) is hereby amended to read as shown in EXHIBIT "1".

INTRODUCED by the City Council on October 21, 2014. **PASSED AND ADOPTED** by the City Council of the City of Lemon Grove, State of California, on November 4, 2014 by the following vote:

AYES:

NOES:

ABSENT:

Mary Teresa Sessom, Mayor

Attest: _____
Susan Garcia, City Clerk

Approved as to form:

James P. Lough, City Attorney

Attachment B

EXHIBIT “1”

8.20.010 TITLE

This chapter may be cited as the “Lemon Grove Massage Therapy Business License Ordinance.”

8.20.020 PURPOSE

The purpose of this chapter is to implement local regulatory requirements, within the authority of the City of Lemon Grove, under the general laws of the State of California, to the fullest extent that local zoning, business licensing, police power and reasonable health and safety regulations are allowed.

8.20.030 RULES OF CONSTRUCTION

This chapter shall be construed liberally in order to effectuate its purposes. Unless otherwise specifically prescribed in this chapter the following provisions shall govern its interpretation and construction:

A. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number and words in the singular number include the plural number.

B. All references herein, as applied to natural persons, shall be considered gender neutral.

C. Any right or power conferred or duty imposed upon any officer, employee, department or board of the city is subject to transfer by operation of law to any other officer, employee, department or board of the city. Any officer or enforcement person referenced herein shall have the authority to delegate enforcement duties in the manner allowed by procedures established by the City Manager or designee.

D. No license or permit holder shall have any recourse whatsoever against the city for any loss, cost, expense or damage arising out of any provision or requirement of this chapter or the enforcement thereof.

E. This chapter does not relieve any license or permit holder of any requirement of any ordinance, rule, regulation or specification of city or other regulatory body. This chapter does not limit applicable health and safety laws or regulations established by the County of San Diego or the State of California.

F. This chapter, to the extent that it retains requirements established prior to January 1, 2010 related to the professionally recognized scope of practice of healing arts professionals licensed under California Business & Professions Code Section 500 *et. seq.*, shall remain in full force and effect.

8.20.040 DEFINITIONS

For the purposes of this chapter, the words or phrases set forth in this section shall have the following meanings:

A. “Building inspection” means the building inspection component of the Lemon Grove Development Services Department.

B. “City” means the City of Lemon Grove, California.

Attachment B

C. "Certificate" means a valid certificate issued by the California Massage Therapy Council pursuant to the California Massage Therapy Act (California Business & Professions Code Section 4600 *et. seq.*).

D. "Council" or "State Council" means the California Massage Therapy Council created by the California Legislature pursuant to the California Massage Therapy Act (California Business & Professions Code Section 4600 *et. seq.*), as amended.

E. "County" means the County of San Diego, a political subdivision of the State of California.

F. "Health department" means the department of public health of the County.

G. "Independent contractor" means a massage therapist or massage practitioner who is not an employee of a massage establishment, but practices at the massage establishment as defined in applicable state law.

H. "License" means the business license to operate a massage therapy business required by this chapter.

I. "Massage" means the scientific manipulation of soft tissues. For the purpose of this chapter, "massage" and "bodywork" shall have the same meaning.

J. "Massage establishment" or "establishment" means a fixed location where massage is performed for compensation, excluding those locations where massage is only provided on an out-call basis.

K. "Massage practitioner" means a person who is certified by the State Council pursuant to Business & Professions Code Section 4604.2 and who administers massage for compensation.

L. "Massage therapist" means a person who is certified by the State Council pursuant to Business & Professions Code Section 4604 and who administers massage for compensation.

M. "Permit" means the business license permit to engage in the business and certified by the State Council to perform the business activities regulated herein.

N. "Person" means a natural person, firm, partnership, association, corporation or other legal entity. Nothing herein confers rights to a firm, partnership, association, corporation or other legal entity to receive a certification under Business & Professions Code Section 4604 or 4604.2.

O. "Solo provider" means a massage business where the owner owns 100% of the business, is the only person who provides massage services for compensation for that business pursuant to a valid and active certificate issued in accordance with the California Massage Therapy Act, and has no other employees or independent contractors.

8.20.050 LICENSE-REQUIRED-ISSUANCE REQUIREMENTS

A. It is unlawful for any person to engage in, conduct, carry on, or to permit to be engaged in, conducted, or carried on, in or upon any premises in the city, the operation of a massage therapy practice as defined in the California Massage Therapy Act, without the business license required by this chapter.

B. No business may advertise, or hold itself out to the public, as a massage business unless it meets the applicable requirements of the Lemon Grove Municipal Code including, but not limited to, Titles 17 (Zoning) and 18, (Citywide Regulations) and meet all of the requirements found under the California Massage Therapy Act, as amended.

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C. Independent contractors of local massage therapy businesses shall each obtain a business license prior to operating within the City of Lemon Grove. Each independent contractor shall possess a state certificate as a massage practitioner or massage therapist in order to be eligible to receive a business license. Any independent contractor whose state certificate has been suspended or revoked shall not be able to practice massage therapy unless and until that independent contractor receives a new certificate or a reactivated certificate.

D. An applicant who is denied a business license may request a hearing under Chapter 5.08 (Uniform Permit Procedures). Failure to have a valid certificate issued by the California Massage Therapy Council shall be grounds for denial of a business license. Upon suspension or revocation of any certificate by the State Council, the certificate holder shall also be prohibited from practicing under any validly issued business license until reinstated as a certificate holder by the California Massage Therapy Council under the California Massage Therapy Act, as amended.

8.20.060 LICENSE-APPLICATION-ADDITIONAL INFORMATION

A. The application for a license to operate a massage therapy establishment shall set forth the proposed place of business and facilities therefor, and the name and address of each applicant and whether it will operate using independent contractors as massage practitioners and/or massage therapists. Each independent contractor shall be required to obtain a business license to practice massage therapy at a business in the City of Lemon Grove.

B. In addition to the foregoing, any applicant for a license shall furnish the following information:

1. Proof of a valid and active certificate to practice as a massage practitioner or massage therapist in the State of California;

2. If the applicant is a corporation, the name of the corporation shall be set forth exactly as shown in its articles of incorporation, together with the names and residence addresses of each of its officers, and directors; and

3. Any business entity, regardless of form, that has independent contractors who operate as massage practitioners or massage therapists within the City shall submit a list of independent contractors that work with the business entity within thirty days of contracting with the independent contractor to practice in Lemon Grove or operate from the business location within the City.

4. An independent contractor shall list the location(s) of businesses where the independent contractor practices massage therapy in the City of Lemon Grove.

8.20.070 OTHER BUSINESS LICENSE REGULATIONS

To the extent they are applicable, the provisions of Title 5 (Business Taxes, Licenses, Permits and Regulations) govern the businesses authorized under this Chapter. 8.20.080 VIOLATION-PENALTY

A. Every person, except those persons who are specifically exempted by this chapter whether acting as an individual, owner, employee of the owner, operator or employee of the operator, or whether acting as a mere helper for the owner, employee or operator, or acting as a participant or worker in any way, who gives massages or conducts a massage establishment or practices the giving or administering of any of the services defined in Section 8.20.040 without first obtaining the necessary permit or license shall be guilty of a misdemeanor and/or infraction as determined by the City Attorney.

Attachment B

B. Any owner, operator, manager or permittee in charge or in control of a massage establishment who knowingly employs a person performing as a massage practitioner or massage therapist, as defined in this chapter, who is not in possession of a valid, unrevoked permit, or who allows such massage technician to perform, operate or practice within such place of business, is guilty of a misdemeanor and/or infraction as determined by the City Attorney.

C. Any owner, operator or manager shall require that all employees and independent contractors possess a valid certificate to practice as a massage practitioner or massage therapist. Any business found to be operating with an employee or independent contractor who does not possess a valid state certificate shall be in violation of the requirements of this chapter.

D. Enforcement of the provisions of this Chapter shall be governed by the procedures established under Title 1 (General Provisions) of the Lemon Grove Municipal Code. All remedies listed therein are cumulative, in addition to any other remedies available under the general laws of the state, may be utilized to remedy violations of this municipal code. Upon any finding (administrative or legal) that any person is practicing massage therapy without a valid license from the City of Lemon Grove or the State of California, the massage establishment or solo provider shall lose their business license granted hereunder subject to the applicable appeal process.